

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**FRIENDLY FORD<sup>1</sup>**

**Employer**

**and**

**Case 28-RC-6281**

**INTERNATIONAL ASSOCIATION OF  
MACHINISTS & AEROSPACE WORKERS,  
LOCAL LODGE 845, AFL-CIO<sup>2</sup>**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

The Petitioner seeks an election within a unit comprised of approximately 42 employees engaged in the servicing of vehicles for the Employer. The unit consists of service technicians, lube technicians, used car technicians, new car technicians, truck technicians, and group leader employees employed out of the Employer's facility located in Las Vegas, Nevada. The Employer contends that the only appropriate bargaining unit should consist of the unit listed above and the body shop technicians, but excluding the group leaders. The Employer contends that body shop technicians share a community of interest with the petitioned-for unit, and group leaders are supervisors as defined in the Act. The unit proposed by the Employer consists of about 47 employees.

For the reasons discussed below in detail, I conclude that the service technicians are a distinct and homogeneous group of highly-trained and skilled craftsmen constituting an appropriate unit both as a craft unit and based on their separate and distinct community of interest and that the body shop technicians need not be included in the petitioned-for unit. I have also concluded that the group leaders are supervisors within the meaning of the Act and should be excluded from the unit.

**DECISION**

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

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<sup>1</sup> The name of the Employer appears as stipulated at the hearing.

<sup>2</sup> The name of the Petitioner appears as stipulated at the hearing.

1. **Hearing and Procedures:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. **Jurisdiction:** The parties stipulated, and I find, that the Employer, Friendly Ford, a Nevada corporation, maintains an office and place of business in Las Vegas, Nevada, where it is engaged in the business of new and used car sales and service. During the past 12-month period, in the course and conduct of its business operations, the Employer had gross revenues of \$500,000, and during the same period, purchased and received at its Las Vegas, Nevada facility, goods valued in excess of \$50,000 directly from points outside the State of Nevada. I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and, therefore, the Board's asserting jurisdiction in this matter will accomplish the purpose of the Act.

3. **Claim of Representation:** The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. **Unit Finding:** There are two primary issues presented in this case: 1) whether the unit sought by the Petition is appropriate for bargaining or should include the body shop technicians urged by the Employer; and 2) whether group leaders are supervisors within the meaning of the Act, and should be excluded from the collective-bargaining unit. I have concluded that the petitioned-for unit is appropriate except that the group leaders are supervisors within the meaning of the Act and must be excluded from the unit. To provide a context for my discussion of these issues, I will first provide an overview of the Employer's operations, followed by a description of the service technicians and body shop technicians and their working conditions. I will also describe the authority of the group leaders. I will then present in detail the case law and the reasoning that supports my conclusions on these issues.

#### **A. Employer's Operations**

The Employer operates a Ford brand automotive dealership selling and servicing new and used automobiles. The Employer's service department prepares automobiles for sale and performs automotive repairs. The Employer's body shop department repairs automobiles that have been damaged and require bodywork. The Employer employs a total of approximately 47 employees in these operations.

The overall operations of the Employer are the responsibility of its Chairman and General Manager. Reporting directly to the General Manager are the Service Manager and the Body Shop Director. Reporting to the Service manager are the Senior Shop Foreman and Shop foreman. Reporting to the Body Shop Director is the Body Shop Manager.

The Employer's facility is located at 660 Decatur Avenue, Las Vegas, Nevada, which houses the sales and service department. The sales department is at the front of the property and the service department is directly behind the sales department. The service

department has approximately 60 service bays where service technicians perform automotive testing and repairs. The truck technicians work in an area separated by a wall from the service technicians but still located at the main dealership's location behind the sales department. The body shop operation is located in a separate facility, approximately one-half mile from the Employer's 660 Decatur Avenue location. Prior to 1988, the body shop was located next to the service department, but the move to its current location was necessitated due to lack of space in the service department.

All service and body shop employees are provided with the Employer's employee handbook containing various personnel policies and are subject to their provisions. The service and body shop employees wear the same uniform. The service department operates Monday through Friday, 7:30 a.m. to 5:00 p.m., and Saturday, 8:00 a.m. to 4:00 p.m. The body shop department operates Monday through Friday, 8:00 a.m. to 5:00 p.m. All employees record their time on computerized time clocks.

## **B. The Service Technicians**

The service department operates under the overall supervision of the Service Manager who directly supervises the senior shop foreman, who supervises the shop foreman, the group leaders, and 38 service technicians. Within the service technician classification, there are five groups: the new car technicians, used car technicians, service technicians, lube technicians, and truck technicians.

Service technicians perform all levels of automotive diagnostic, maintenance, and repair work. A substantial part of the work done by service technicians is pursuant to warranties on the vehicles. All service technicians are certified by the National Institute for Automotive Service Excellence (ASE) in multiple areas of automotive repair. Service technicians provide their own tools, which can be valued as much as \$60,000. The Employer provides specialty tools and major diagnostic and measuring tools.

New car, used car, service, and truck technicians are paid on a flat rate, i.e., their wages are determined by multiplying their assigned hourly rate by the number of hours allocated to the particular job they are working on. An industry manual entitled "The Motors Manual" determines the number of hours to allocate to a particular job. The assigned hourly rate of these technicians ranges from \$16.00 to \$21.25 per hour. The lube technicians, on the other hand, are paid an hourly wage which ranges from \$9.20 to \$10.00 per hour and are given the lube and oil change assignments. Lube technicians can assist the other service technicians when needed. The Employer stipulated that the lube technicians are appropriately included in the petitioned-for unit.

## **C. The Body Shop Technicians**

The body shop operates under the overall supervision of the Body Shop Director and Body Shop Manager, who directly supervises nine body shop technicians. The body shop technicians repair body damage on vehicles. They usually work on vehicles that have been in accidents and do not do warranty work. The body shop technicians can do

limited mechanical repairs that have occurred due to the accident, but their primary function is to repair body damage to the automobiles.

Body shop technicians receive I-CAR Certification that results from a 10-week course on body repair. This is a national certification, the course paid for by the Employer, that body shop employees attend on their own time. Body shop technicians provide many of their own tools.

Body shop technicians are also paid on a flat rate, yet their assigned wages are \$13.50 for all body shop technicians except for one. The flat rate times for body shop repairs are determined by an industry-wide manual, entitled "The Mitchell Manual." One body shop technician receives approximately \$20 per hour, as he performs the bulk of the mechanical work that needs to be done on the automobiles that come into the body shop. This employee will be referred to as the body shop journeyman. He is an experienced mechanic, having worked for years as a mechanic prior to working in the body shop. He performs mechanical work approximately 95% of the time, but performs no warranty work and rarely performs diagnostic work. Rather, he replaces damaged mechanical parts as well as damaged body parts, to effect the complete repair of the vehicle. Body shop technicians do not perform any mechanical repair work that comes to the Employer through the service department, including service warranty work.

There is very little interchange between the body shop and the service department. There is no evidence of a system of transfers between the service technicians and the body shop. Only one employee has transferred to the service department after working in the body shop, with this transfer only occurring after the employee obtained certain certifications. There is no evidence of day-to-day work-related contact between the service technicians and the body shop employees. Although a vehicle may be taken to the body shop for body repair and then taken to the service department for mechanical repair, this occurs only if the body shop is unable to perform the more extensive mechanical repairs that the service technicians perform. Simple repairs that have been necessitated due to the automobile being in a collision can be performed in the body shop. In limited instances, a body shop employee may come to the service technician for assistance in diagnostic analysis of the vehicle to obtain the expertise of the skilled mechanics that work in the service department.

#### **D. Supervisory Status of Group Leaders**

The Employer contends that the group leaders should be excluded from the unit as supervisors. The Employer contends that the group leaders responsibly direct the service technicians; that they have the authority to assign work; that they have the authority to effectively recommend terminations and discipline of service technicians; and they have authority to recommend the hiring and wage increases of service technicians. I agree with the Employer's contentions with respect to the group leaders.

A group leader is assigned to each of four service technician groups. There appears to be no set criteria for the assignment of a group leader or service technicians

within these groups. The groups are not divided by function, seniority or skill. Rather, the groups are designated by color: red, yellow, blue and green. Within each group is a single group leader and approximately seven to ten service technicians. This structure began in March 2003. Group leaders were selected for their positions due to their being senior and master technicians, a designation received after years as a mechanic. Once selected, the group leaders met and split the approximately 38 service technicians into four groups, using a lottery system. The separation of service technicians into four groups was adopted by upper management.

Group leaders are paid on a flat rate scale, similar to non-lube service technicians. Group leaders also receive holiday pay, which is not available to salaried employees. Group leaders receive an additional bonus based upon the number of hours that their particular group produces.

Group leaders have recommended discipline and discharge of service technicians. One group leader has recommended on four occasions that service technicians be discharged and they were, without independent investigation by the discharge authority. Record testimony reveals that group leaders have recommended that written warnings be issued to service technicians, although none of the documents reflecting warnings offered into the record is signed by group leaders.

Group leaders may assign work to service technicians, but only if a service writer specifically asks that an assignment take priority over what has been entered into the service computer. Generally, work is assigned through a computer system where both group leaders and service technicians individually enter "Find Job" into the computer, a job is searched for and found on the computer, and the group leader or service technician self-assigns the job and begins the work.

Group leaders do not approve overtime, as none is given by the Employer for the service technicians. Group leaders can allow a service technician to leave early if their jobs are completed for the day, as well as leave to attend to doctor's appointments and other errands. This is generally done over someone's lunch period, although many of the service technicians do not take a lunch break. Lunch breaks are generally 12:00 p.m. to 1:00 p.m., but service technicians can alter their lunch breaks and the group leaders are authorized to approve such changes.

Group leaders are not involved in, nor offer recommendations regarding, the hiring of new employees. Group leaders do provide input on where to place a new hire in the service department. However, once an employee has been hired, group leaders, consulting among themselves, can transfer service technicians between groups.

When a previously repaired vehicle is brought back to have further work done or work redone, called a recheck, the group leader determines whether the recheck is the result of faulty work on the part of a service technician. The determination of fault has a direct effect on whether or not the technician will receive a bonus, since bonuses are based on a service technician's having few, if any, rechecks.

Group leaders punch a time clock, as do all service technicians, carry tools, and perform service on automobiles, as do the service technicians. Group leaders wear the same uniforms as service technician employees, perform the same work as service technicians, and have the same hours and breaks as service technicians.

## **E. Legal Analysis and Determination**

### **1. Supervisory Status of the Group Leaders**

Section 2(11) of the Act defines the term “supervisor” as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature, but requires the use of independent judgment.

The possession of any one of these authorities is sufficient to deem the employee invested with such authority as a supervisor. *Allen Services Co.*, 314 NLRB 1060 (1994); *Big Rivers Electric Corp.*, 266 NLRB 380, 382 (1983). Persons with the power “effectively to recommend” the actions described in Section 2(11) are supervisors within the statutory definition. *Sun Refining & Marketing Co.*, 301 NLRB 642, 649-650 (1991); *Custom Bronze & Aluminum Corp.*, 197 NLRB 397 (1972). “Without question, an individual who can discipline employees or effectively recommend their discipline is a statutory supervisor.” *Tree-Free Fiber Co.*, 328 NLRB No. 51 slip op. at p. 4 (1999) (citing *Northcrest Nursing Home*, 313 NLRB 491, 497 (1993); *Superior Bakery*, 294 NLRB 256, 262 (1989). The burden of proving supervisory status is on the party that alleges that it exists. *St. Francis Medical Center West*, 323 NLRB 1046 (1997). Thus, the burden of establishing supervisory status lies with the Employer.

Based on the record before me, I find that the group leaders are statutory supervisors. I rely on several factors. They have the authority to recommend the discharge of employees. Group leader exercise independent judgment in making these recommendations, and their recommendations are not independently investigated by upper management. Group leaders determine who will receive bonuses based upon their review of the services technicians’ responsibility for a recheck. Group leaders authorize employees to leave early and/or take a different lunch break than what is scheduled. Group leaders have transferred service technicians within the groups, determined who would be in their groups, and prioritized the work assignments of the service technicians in their group. Group leaders are given a bonus based upon the hours their group produces.

Although not dispositive of the issue of supervisory status, non-statutory indicia can be used as background evidence on the question of supervisory status. See *Training*

*School of Vineland*, 332 NLRB No. 152 (2000), and *Chrome Deposit Corps.*, 323 NLRB 961, 963 fn. 9 (1997). A secondary indicia of supervisory status is the ratio of alleged supervisors to employees. If the group leaders were not statutory supervisors, two individuals, the senior service shop foreman and service shop foreman would be supervising 42 service technicians a disproportionately high ratio of about 21 employees for each supervisor. E.g.: *Pennsylvania Truck Lines*, 199 NLRB 641 (1972). If the group leaders are found to be supervisors, the ratio drops to about seven to ten service technicians per supervisor, a more proportionate and realistic ratio of employees to supervisors.

## **2. Appropriate Bargaining Unit**

Section 9(b) of the Act provides that “the Board shall decide in each case whether, to assure to employees fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof.” It is well established under Board law that the Act does not require the unit for bargaining be the optimum, or most appropriate unit, but only an appropriate unit. *Home Depot USA*, 331 NLRB 1289, 1290 (2000); *Overnight Transportation Co.*, 322 NLRB 723 (1996). An appropriate unit insures to employees “the fullest freedom in exercising the rights guaranteed by the Act.” *Morand Brothers Beverage Co.*, 91 NLRB 409 (1950), enf’d. 190 F. 2d 576 (7<sup>th</sup> Cir. 1951); *Dinah’s Hotel and Apartments*, 295 NLRB 1100 (1989). A union is not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1962). Furthermore, in *Pacemaker Mobile Homes*, 194 NLRB 742, 743 (1971), the Board explained that when no other labor organization is seeking a unit larger or smaller than the unit requested by the petitioner, the sole issue to be determined is whether the unit requested by the petitioner is an appropriate unit. In addition, the Board will “consider a petitioner’s desires relevant,” although this will “not, however, obviate the need to show [a sufficient] community of interest on the facts of the specific case.” See *Airco, Inc.*, 273 NLRB 348 fn. 1 (1984); *Marks Oxygen Co.*, 147 NLRB 228 (1964).

In determining whether a petitioned-for-unit is an appropriate unit, the Board addresses whether the employees share a community of interest. *Home Depot USA, Inc.*, 331 NLRB at 1290; *The Boeing Company*, 337 NLRB No. 24 (2001). In *Home Depot USA*, supra, at 1291, the Board stated that factors it considers in determining community of interest among different groups of employees include:

[A] difference in method of wages or compensation; different hours of work; different employment benefits; differences in job functions and amount of working time spent away from the employment or plant sites...the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and history of bargaining [*Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962)].

The Petitioner contends that the petitioned-for unit consisting of the service technicians is an appropriate craft unit. A craft unit is defined as:

...one consisting of a distinct and homogeneous group of skilled journeyman craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1997).

Also, with respect to a craft unit, the general rule is, if there is no history of collective bargaining on a more comprehensive basis, a craft department group having a separate identity of functions, skills, supervision, and exercising craft skills is generally an appropriate unit. *E.I. Du Pont de Nemours & Co.*, 162 NLRB 413 (1966). Here, there is no history of collective bargaining. In *Burns & Roe*, supra at 1308, the Board described the test for a craft unit:

In determining whether a petitioned-for group of employees constitutes a separate craft unit, the Board looks at whether the petitioned-for employees participate in formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdiction lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits and cross-training.

In *Dodge City of Wauwatosa*, 282 NLRB 459 (1986), the Board stated that “mechanics possessing skills and training unique among other employees constitute a group of craft employees with an automotive...department, and therefore, may, if requested, be represented in a separate unit, excluding other service department employees.” *Id.* at 460. I conclude that the service technicians constitute a distinct and homogeneous group of skilled journeymen craft employees such that they constitute an appropriate craft unit. The service technicians all have extensive training as mechanics; they are ASE certified in multiple areas; and possess many of the highest certifications offered by Ford. They perform skilled mechanical work and utilize specialized tools in the performance of this work.

Although the employees in the body shop may be involved in the “vehicle repair process,” the service technicians are the only employees exclusively engaged in mechanical work. Except for the body shop journeyman, no other body shop technicians perform substantial mechanical work. The primary duties of the body shop technicians are to repair auto bodies rather than perform mechanical work. To the extent the body shop journeyman does perform mechanical work, it does not involve service department work, but rather work that is part of his primary duties of automotive body repair. Thus, because of his total lack of interaction with the service department, despite his overlap in skills, the body shop journeyman could not be characterized as sharing a substantial community of interest with the service technicians.



The service department is physically separated from the body shop by a half of a mile. Although there is a wall that separates the truck technicians from the rest of the service department, it is directly next to the service department, at the same address and location of the main dealership.

Although both the service and body shop technicians provide their own tools, the service department maintains specialized tools and equipment used exclusively for the diagnosis and repair of mechanical problems. The body shop maintains its own specialty tools and equipment to perform the full range of automotive body repair. Service technicians do not utilize any of that equipment. Thus, both the service department and the body shop maintain separate specialty equipment used exclusively by their respective employees to serve the primary function of each department.

There is no line of progression for employees from the body shop to the service department. The lack of transfer and interchange between the service department and the body shop supports the finding that service technicians do not share a community of interest with employees in other departments.

Accordingly, for the reasons stated above, I find that the petitioned-for unit of service technicians is an appropriate unit. I conclude that this unit need not include body shop technicians as urged by the Employer. Although the body shop technicians, notably the journeyman, do perform some mechanical work, that work is incidental to their primary duty of body repair, which requires different skills, expertise, and equipment. Moreover, the body shop technicians are separately supervised; work in a separate location; are paid a substantially lower wage rate than service technicians, and do not transfer or interchange with the service technicians.

Accordingly, based on the record evidence, I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time and regular part-time automotive service technicians, including new and used car technicians, truck technicians, and lube technicians employees employed by the Employer at its 660 Decatur, Las Vegas, Nevada facility.

**EXCLUDED:** All body shop technicians, service technician group leaders, office clerical employees, guards, and supervisors as defined in the Act.

There are approximately 38 employees in the unit found appropriate.

## **DIRECTION OF ELECTION**

I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election, that will issue soon, subject to the Board's Rules and Regulations. The employees who are eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and, if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

## **INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, LOCAL LODGE 845, AFL-CIO**

### **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within seven (7) days of the date of this Decision, the Employer file with the undersigned, two (2) copies of an election eligibility list containing the full names and addresses of all eligible voters. The undersigned will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, the undersigned must receive the list at the NLRB Regional Office, 2600 North Central Avenue, Suite 1800, Phoenix, Arizona, 85004-3099, on or before July 6, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

## **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in Washington must receive this request by July 13, 2004. A copy of the request for review should also be served on the undersigned.

**DATED** at Phoenix, Arizona, this 29<sup>th</sup> day of June 2004.

/s/ Cornele A Overstreet

Cornele A. Overstreet, Regional Director  
National Labor Relations Board - Region 28